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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

NICOLAS CASTILLO, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

JENSEN PRECAST, a Nevada stock corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: STK-CV-UOE-2023-10091
[Consolidated with Case No. STK-CV-UOE-2023-0013293]

Assigned for All Purposes to:
Honorable Robert T. Waters
Department 11B

<u>**CLASS ACTION**</u>

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declaration of Proposed Class Counsel (Douglas Han); and [Proposed] Order filed concurrently herewith]

Hearing Date:
Hearing Time:
Hearing Place: Department 11B

Complaint Filed: September 25, 2023
Trial Date: None Set

NICOLAS CASTILLO, individually, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”); Plaintiff, v. JENSEN PRECAST, a Nevada stock corporation; and DOES 1 through 100, inclusive; Defendants.	Case No.: STK-CV-UOE-2023-0013293 Assigned for All Purposes To: Honorable Jayne Lee Department 10C Complaint Filed: December 8, 2023 Trial Date: None Set

PLEASE TAKE NOTICE that on _________ at _____, or as soon as the matter may be heard, before the Honorable Robert T. Waters in Department 11B of the San Joaquin County Superior Court located at 180 East Weber Avenue, 2nd Floor Stockton, California 95202, Plaintiff Nicolas Castillo ("Plaintiff") will and hereby does move for an order:

- Granting Preliminary Approval of the class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement and Release ("Settlement Agreement," "Settlement," or "Agreement"), attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds;
- Conditionally certifying the Class for settlement purposes only;
- Appointing Plaintiff as the class representative;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") attached as **Exhibit A** to the Settlement Agreement;
- Directing the mailing of the Class Notice with a postage-paid return envelope to the Class;
- Approving the proposed deadlines for the settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, and approval of the allocation of the Private Attorney General Act of 2004 ("PAGA") Penalties.

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This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: January 15, 2025

JUSTICE LAW CORPORATION

By: ______________________

Douglas Han

Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour class action settlement by Plaintiff on behalf of himself and all current and former hourly-paid or non-exempt employees of Defendant Jensen Enterprises, Inc. (erroneously sued as Jensen Precast) ("Defendant") within the State of California at any time during the period from September 25, 2019, through November 20, 2024 ("Class" and "Class Period"). As of and through June 12, 2024, the number of Class Members is estimated to be nine hundred seventy-eight (978), which was confirmed by Defendant. (Declaration of Douglas Han In Support of Motion for Preliminary Approval of Class Action Settlement ("Han Decl."), ¶¶ 8, 9.)

II. BACKGROUND

On September 22, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

On September 25, 2023, Plaintiff filed a wage-and-hour class action lawsuit against Defendant in the Superior Court of California, County of San Joaquin, alleging eight (8) causes of action (Case No. STK-CV-UOE-2023-10091). (Han Decl., *supra*, at ¶ 11.)

On December 8, 2023, Plaintiff filed a representative PAGA action against Defendant in the Superior Court of California, County of San Joaquin (Case No. STK-CV-UOE-2023-0013293). (Han Decl., *supra*, at ¶ 12; Exhibit 4.)

After engaging in discovery, investigations, and negotiations, the Parties attended mediation on August 19, 2024 with the mediator Steve Serratore and negotiated a global settlement via a mediator's proposal. (Han Decl., *supra*, at ¶ 13.)

In line with the settlement, on September 4, 2024, the Parties stipulated to consolidate both lawsuits and to designate the class action lawsuit as the lead case. (Han Decl., *supra*, at ¶ 14.)

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III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions

After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.) Plaintiff drafted and propounded form interrogatories, special interrogatories, requests for admissions, and requests for production of documents, and Defendant responded to the formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in the informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

Prior to the mediation, Defendant produced several documents relating to the policies, practices, and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based on the information provided and interviews with putative class members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to include non-discretionary bonuses in employees' regular rate of pay; (4) maintained invalid AWS; (5) failed to reimburse employees for necessary business expenses; (6) issued noncompliant wage statements; and (7) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-27.)

b. The Parties Were Able to Reach an Agreement on Settlement of the Action

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with an experienced mediator. (Han Decl., *supra*, at ¶ 28.) Under the auspices of the mediator, the Parties reached a settlement via a mediator's proposal, the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 28; Exhibits 2, 5.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 31.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

Plaintiff and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶ 32.) Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe that the Settlement is a fair, adequate, and reasonable settlement and is in the best interests of the Class Members. (*Ibid.*)

iii. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties investigated and evaluated the strengths and weaknesses of the claims and defenses before reaching the Settlement and engaged in research and discovery to support the Settlement. (Han Decl., *supra*, at ¶ 33.) The Settlement was only possible following significant investigation and evaluation of the relevant policies and practices, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where the Parties understand "the strength of the case; the reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best possible recovery" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 33; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed that (subject to the Court's approval) this matter be settled and compromised for the non-reversionary sum of $1,500,000 ("Gross Settlement Amount") which includes: (1) Class Counsel Fees Payment up to $525,000 (35% of the Gross Settlement Amount); (2) Class Counsel Litigation Expenses Payment up to $30,000; (3) Class Representative Service Payment up to $10,000; (4) Administration Expenses Payment up to $20,000; and (5) PAGA Penalties up to $75,000. (Han Decl., *supra*, at ¶ 29.)

ii. Calculating Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that $840,000 ("Net Settlement Amount") will be paid to Participating Class Members – with a gross *average* Individual Class Payment estimated at $858.90. (Han Decl., *supra*, at ¶ 30.)

The Participating Class Members will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated ten percent (10%) to the settlement of wage claims, forty-five percent (45%) to the settlement of claims for penalties, and forty-five percent (45%) to the settlement of claims for interest. (*Id.* at § C(2)(d)(i).)

The portion of the PAGA Penalties that is to be paid to each Aggrieved Employee shall be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA Penalties will be allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

iii. Notice to the Class

No later than thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send the Class Notice with a translation to all Class Members identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

iv. Distribution of Funds

The Gross Settlement Amount will be funded and distributed pursuant to the timeline and manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed settlement checks will be canceled and transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member. (*Id.* at §§ D(3)(a), D(3)(c).)

v. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Defendant and the Released Parties from the Release Class Claims. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § E(2).)

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Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § E(3).)

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Defendant and all Released Parties from the Plaintiff's Release. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § E(1).) Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

With regards to class action releases, """[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint."'" (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in this case are acceptable because they are limited to the scope of the allegations in the operative complaints. Moreover, the released claims are """based on *the identical factual predicate* as that underlying the claims in the settled class action."'" (*Ibid.*) In other words, the released claims do not """go beyond the scope of the allegations in the operative complaint … ."'" (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

The Parties' counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the Settlement.[1] (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

Rules of Court, rule 3.769 requires court approval for class action settlements.[2] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
>
> . . .
>
> (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts have discretion to approve settlements that are fair, not collusive, and consider "'all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.'" (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

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[1] The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the Class, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

[2] The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

Cal.App.4th 399, 409.) The most important factor in this regard is """the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."""" (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 130; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

Kullar instructs the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum amount the class could recover if plaintiff prevailed on all his claims, provided there is a record that allows "'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) "[A]s the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar*, at p. 133.)

i. The Settlement Amount of $1,500,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the data produced, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 33.)

The claims are predicated on the alleged: (1) failure to properly calculate and pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200. (Han Decl., *supra*, at ¶ 34.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 35.)

While Plaintiff believes that the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 36.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*

Stores, Inc. have reached different conclusions concerning certification of wage-and-hour claims.[3] (Han Decl., *supra*, at ¶ 36.) Thus, the calculations for potential damages were discounted.[4]

ii. The PAGA Penalties of $75,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 46.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained that it had a strong argument that it would be unjust to award maximum PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 46; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore, Defendant argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to about **$58,500** (585 employees x $100 penalty for initial violation) on the low end and **$351,000** (585 employees x $100 penalty for initial violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 47-49.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 50.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating $75,000 to PAGA civil penalties was reasonable given that Defendant is also paying an additional $1,425,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in

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3 (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc*. (2006) 141 Cal.App.4th 1422 [affirming denial of certification].)

4 Notably, the Parties stipulated to attend an early mediation while preserving Defendant's right to compel arbitration. The Parties also agreed that the case would return to the status quo in the event this Court does not approve this Settlement.

good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are reasonable.[5] (Han Decl., *supra*, at ¶ 50.)

Considering the defenses, supporting evidence, and position that the case is not suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **$10,720,123.91** on the low end and around **$11,665,118.29** on the high end. (Han Decl., *supra*, at ¶ 50.)

Category	**Potential Exposure**	**Certification Risk**	**Merits Risk**	**Realistic Exposure**
Rest Break Premiums	$1,832,581.17	70%	60%	$219,909.74
Meal Break Premiums	$1,598,706.78	60%	60%	$255,793.09
Overtime/Minimum Wage: Off-the-Clock Work	$1,889,988.76 to $2,834,983.14	50%	50%	$472,497.19 to $708,745.79
Regular Rate	$157,460.83	30%	50%	$55,111.29
Alternative Workweek Schedule	$72,292.77	40%	50%	$21,687.83
Unreimbursed Business Expenses	$755,130	30%	70%	$158,577.30
Wage Statement Penalty	$1,550,250	60%	60%	$248,040
Waiting Time Penalty	$2,863,713.60	60%	60%	$458,194.18
MAXIMUM TOTAL EXPOSURE	**$10,720,123.91** to **$11,665,118.29**[6]			**$1,889,810.62** to **$2,126,059.22**[7]

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5 (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, "[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims".)

6 (Han Decl., *supra*, at ¶¶ 37-45.)

7 (*Id.* at ¶¶ 52-59.)

The realistic recovery for this case is about **$1,889,810.62** on the low end and **$2,126,059.22** on the high end. (Han Decl., *supra*, at ¶ 60.) The Gross Settlement Amount is about thirteen percent (12.86%) of the maximum potential exposure and around seventy percent (70.55%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242, "[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators".) This settlement is in line with the realistic exposure if Plaintiff prevailed at trial and provides a significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

Code of Civil Procedure section 382 "authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.'" (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." (*Ibid.*)

Plaintiff contends that the Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting individual Class Members. (Han Decl., *supra*, at ¶ 61.) Plaintiff contends that his claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff asserts that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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i. The Proposed Class Is Ascertainable and Sufficiently Numerous

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

This case involves approximately nine hundred seventy-eight (978) Class Members (as alleged), as of June 12, 2024, meaning that the alleged Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 62; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of "as many as 190 current and former employees" is sufficiently numerous].)

ii. Class Members Share a Well-defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." (*Ibid.*) The application of each of these factors is discussed below.

1. Common Issues Predominate

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*

Superior Court (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court certified class of dancers on state law claims].)

Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 63.) Plaintiff contends that all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiff's Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiff is a former employee of Defendant and alleges that he and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 64.) Plaintiff seeks relief for these alleged claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiff contends that the alleged claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff contends that he has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 65.) Plaintiff conducted himself diligently and responsibly in representing the Class, understands the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff contends that he has no interest adverse to the interests of the other Class Members. (*Ibid.*)

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4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends that the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are also current employees, Plaintiff believes that the fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors is small. (*Id.* at p. 1802.) All these elements at this stage are present here.

f. Notice to the Class Complies with Rules of Court, Rule 3.769(f)

Rules of Court, rule 3.769(f), provides:

> If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

The Class Notice meets all these requirements. The Class Notice advises the Class Members of their right to participate in the Settlement, how and when to object to or request exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

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V. CONCLUSION

Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for settlement purposes, and Class Notice should be approved.

Dated: January 15, 2025

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiff

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is dmather@justicelawcorp.com.

On January 15, 2025, I served the foregoing document described as

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case: **Castillo v. Jensen Precast**
LWDA/Court Case No.: **LWDA Case No.: CM-983204-23**
Court Case No.: STK-CV-UOE-2023-10091 [Consolidated with Case No. STK-CV-UOE- 2023-0013293]
San Joaquin County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION
Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 15, 2025, at Pasadena, California.

Drew Mather

Drew Mather